



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION

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GOVERNOR

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COMMISSIONER

Memorandum

DATE: October 6, 2011

TO: The Board of Environmental Protection

FROM: Mark Stebbins, Bureau of Land & Water Quality

RE: Permission to Begin Formal Rulemaking & Post to Public Comment: Chapter 378
Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay & Silt and the
Performance Standards for the Storage of Petroleum Products

Statute and Rule Reference:

As required by PL 2011 Chapter 26, the Department of Environmental Protection is directed to amend its rules *Chapter 378 Variance Criteria for the Excavation of Rock, Borrow, Topsoil, Clay or Silt and the Performance Standards for the Storage of Petroleum Products*, 06-096 CMR 378 to allow licensed mining operation to store of a small amount of diesel fuel on significant sand and gravel aquifers mapped by Maine Geological Survey. In addition, the proposed rule ensures consistency between department programs.

38 M.R.S.A. Section 341-D provides the Board of Environmental Protection with the authority to adopt, amend and repeal rules as necessary for the conduct of its business.

Location / Applicability:

The proposed rule only applies to the organized areas of the State and mining operations licensed under the Performance Standards for Excavations, 38 M.R.S.A. §490-C

Description:

In April 2010, the DEP completed rulemaking (Chapter 692) for the siting of oil storage facilities. During the implementation of these new rules, the Department became aware of issues concerning aboveground storage tanks located in gravel pits. Specifically, a person may not install or cause to be installed an oil storage facility within a significant sand and gravel aquifer mapped by the Maine Geological Survey. This prohibition applies regardless of proximity to a public or private drinking water well. The rules do provide a variance procedure for siting petroleum storage tanks over mapped sand and gravel aquifers determined not to be "High Potential Aquifers" i.e. polluted or those with a low or moderate yield of less than fifty gallons per minute. Based on licensing information, approximately 55 % (421) of the licensed gravel pits are located on sand and gravel aquifers. In addition 3% of licensed gravel pits are located on high yield aquifers. Neither the Department nor the Maine Aggregate Association (MAA) realized the impact of the new rule.

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In response to the concerns expressed by industry, the Department has met with MAA on several occasions to find common ground in supporting our goal of protecting sand & gravel aquifers and allowing operators to fuel their equipment where they operate. An agreement has been secured with MAA to allow them to install a small AST in mapped sand and gravel pit while still protecting the aquifer (diesel only, max 1100 gals, installed with all safety features, O&M procedures, etc.). The fuel storage requirements for the mining industry are contained in the variance rules, Chapter 378-Appendix A. These rules are major substantive and require approval by the Legislature to make changes. This rulemaking provides the mechanism to make the necessary changes in Chapter 378 and 692 concerning fuel storage in gravel pits.

Department Recommendation:

The Department s recommends a comment period ending November 14, 2011.

Estimated Time of Presentation:

15-20 minutes.